

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Original
B
P/S

74-1732

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

Docket No.
74-17 32

AL MARTIN,

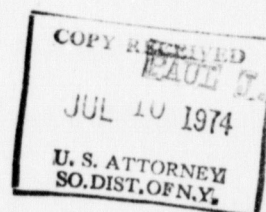
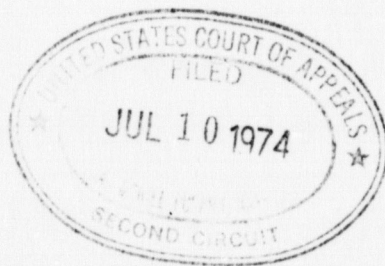
Defendant-Appellant

APPENDIX FOR DEFENDANT-APPELLANT

OZRO THADDEUS WELLS
C. VERNON MASON,
of Counsel
377 Broadway - Suite 1107
New York, New York 10013
(212) CA 6-3000

WALLACE GOSSETT
CHARLES E. WILLIAMS III
10 Columbus Circle
Suite 2030
New York, New York 10019

Attorneys for Defendant-
Appellant



PAGINATION AS IN ORIGINAL COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES OF AMERICA

AFFIDAVIT

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CRIMINAL DOCKET

JUDGE: I will now

4. 1. 1. 1. 1.

[illegible]

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED		
		DATE	NAME	RECEIVED
Fine,				6
Clerk,				40
Marshal, 1,				
Attorney,				
Commissioner's Court,				1
Witnesses: Ti. 18:2113(a) & 2)				5
Bank Robbery by force				
and violence				
ONE COUNT				

DATE	PROCEEDINGS
8-22-73	Filed Indictment. (This matter is related to 72 Cr 1158 & 73 Cr 265)
9-4-73	BOTH DEFTS- Bench warrants ordered. Court directs entry of not guilty pleas. Duffy, J.
12-4-73	Al Martin (atty Lawrence Levine Present) application for reduction of bail-denied. Deft cont'd on bail of \$50,000. previously fixed in the Northern Dist. of New York. Case to be ready for trial by 1-3-74. Deft remanded in lieu of \$50,000. bail. Pol
12-10-73	AL MARTIN- filed notice of appearance by att. Lawrence Levine, 400 Madison Ave, NYC 565-6118.
1-11-74	A. Martin- filed affdvt for writ of habeas corpus ad testificandum. Writ issued. ret: 1-15-74.

A-1

PROCEEDINGS	CLERK'S FEES	
	PLAINTIFF	DEFENSE
1-4-73	BOTH DEFTS- bench warrant issued.	
1-10-74	AL.MARTIN- filed notice of appearance by atty: O. T. Wells & Cecil Vernon Mason, 377 Bway, Suite L107, NYC 10013 Ca 6-3000.	
1-18-74	Filed affdvt of Ozro Thaddeus Wells in support of application for substitution of atty.-AND- MEMO-END. substitution granted. Pollack	
1-22-74	Filed writ of habeas corpus ad testificandum. Writ ret. 1-14-74.	
2/6/74	Al Martin (atty present) application for bail reduction denied. Trial date set for 2-25-74. Pollack, J.	
2/25/74	Deft Al Martin (atty present) appears for suppression hearing. Suppression hearing held. Trial to begin 2/28/74.	
2/26/74	Trial begun. with jury. A TRUE COPY RAYMOND F. BURGHARDT, Clerk	
2/27/74	Trial cont'd. By <u>Raymond F. Burghardt</u> Deputy Clerk	
2/28/74	Trial cont'd & concluded. Jury deliberation.	
3/1/74	Deliberations cont'd and concluded. Deft found guilty as charged. P.S.R. ordered. sent. date 3/28/74 at 10AM. Deft remanded. Pollack	
3/18/74	Filed deft Al Martin's notice of motion for judgment of acquittal notwithstanding the verdict, or in the alternative, for a new trial.	
3/18/74	Filed MEMO-END. on motion dtd this date. Motion denied. Pollack, J.	
3/28/74	AL MARTIN Filed JUDGMENT (atty present) Deft is hereby committed to custody of the Atty General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS. Bail is fixed at \$50,000. Pending Appeal. Pollack, J. ent. 3/29/74 3/29/74 Issued copies.	
4/4/74	Al. Martin-filed notice of appeal from judgment dtd 3/28/74. Mailed copies to O.T. WELLS, and the deft. at West St.	

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

x 73 CRIM. 814

-v-

AL MARTIN and
JOHN DOE,

Defendants.

INDICTMENT

73 Cr.

The Grand Jury charges:

On or about the 16th day of August, 1972,
in the Southern District of New York, AL MARTIN and
JOHN DOE, the defendants, and others to the Grand
Jury known and unknown, by force and violence and
by intimidation, did take and attempt to take from
the person and presence of another, money and property
in the amount of approximately \$4,553.05 belonging to
and in the care, custody, control, management and
possession of the Chase Manhattan Bank, 2065 Second
Avenue, New York, New York, a bank the deposits of
which were then insured by the Federal Deposit
Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

AUG 20 1973

AUG 20 1973

A TRUE COPY
RAYMOND F. DUEGHARDT, Clerk

By E. C. Becker
Deputy Clerk

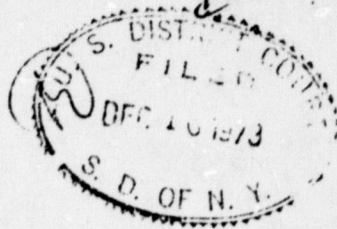
A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

AL MARTIN



TO: JOHN LIVINGSTON, Clerk
United States District Court
Southern District of New York

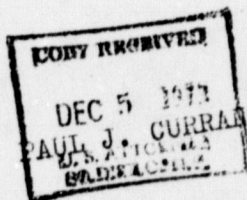
S I R :

You are hereby notified that I appear for

AL MARTIN

the defendant in the above-entitled action.

Dated: New York, New York



LAWRENCE LEVINE
Attorney for Defendant

400 MADISON AVENUE

NEW YORK, NEW YORK

565-6118

Telephone Numbers

2

A-4

AFFIDAVIT FOR W/H/C AD TESTIFICANDUM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

AL MARTIN, :

Defendant. :

AFFIDAVIT

73 Cr. 814

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

BART M. SCHWARTZ, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above entitled matter; that one John Witherspoon now incarcerated at Danbury Federal Penitentiary, Danbury, Connecticut, serving a sentence which will terminate in 1988 for violation of federal law (bank robbery) is to be interviewed to determine whether or not he has information which will be material and necessary to present to this Court upon the trial of the above named case; that the case is now on the calendar of the United States District Court for the Southern District of New York for January 18, 1974.

WHEREFORE, your deponent respectfully prays that a writ of habeas corpus ad testificandum issue directing the Warden, Danbury Federal Penitentiary and the United States Marshal for the Southern District of New York and the District of Connecticut to produce him in this Court on January 15, 1974.

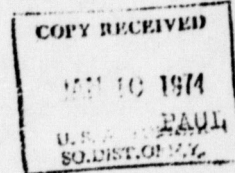
Bart M. Schwartz
BART M. SCHWARTZ
Assistant United States Attorney

Sworn to before me this
11th day of January, 1974.

Frederick Hayes
FREDERICK HAYES
Notary Public, State of New York
Ex. No. 1, 1965
Qualified in Queens County
Certs. filed in New York County
Commission expires March 31, 1975

BA-5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



J. L. CORREAN

UNITED STATES OF AMERICA

-v-

AL MARTIN

73 C.E.

814

TO: RAYMOND F. BURGHARDT, Clerk
United States District Court
Southern District of New York

S I R :

You are hereby notified that I appear for

AL MARTIN

the defendant in the above-entitled action.

Dated: New York, New York

January 10, 1974

O. TWELLS of Cecil Vernon Mass

Attorney for Defendant

377 Broadway Suite 1101
New York, N.Y.

10013

CANAL 6 - 3000

Telephone Numbers

- 4 -

A-6

Wells & Brown

Attorneys and Counselors at Law

OZRO THADDEUS WELLS
R. FRANKLIN BROWN

HAROLD F. GOLDWASSER
NEW YORK, N.Y.

377 Broadway, New York, N.Y. 10013
(212) Canal 6-3000

January 17, 1974

Honorable Milton Pollack
United States District Judge
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: The United States of America
v. Al Martin
73 Cr. 814 (M.)

Dear Judge Pollack:

Please consider this letter as a renewed application to substitute Mr. Lawrence Levine as attorney of record for Al Martin, the defendant above-indicated.

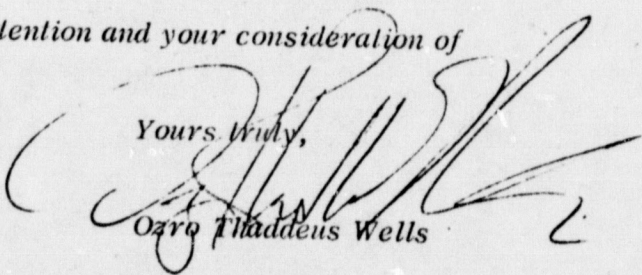
I am enclosing my affidavit in support of this application and in support of another application, submitted concomitantly, to adjourn the case to 25 February 1974.

I have conferred with Mr. Levine regarding the substitution and he informed me that he agrees to same.

I have stated in the affidavit aforementioned that I shall be available to represent Mr. Martin on 25 February 1974 until the case is concluded.

Thank you for your attention and your consideration of my applications.

Yours truly,


Ozro Thaddeus Wells

OTW:dcs

cc: Michael B. Mukasey, Esq.
Bart M. Schwartz, Esq.
Lawrence Levine, Esq.

5

the substitution and joins in the request for the adjournment to
25 February 1974.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

-----X
UNITED STATES OF AMERICA

AFFIDAVIT

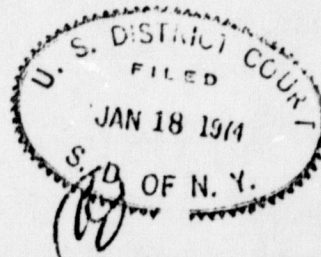
-against-

AL MARTIN,

73 Cr. 814 (MP)

Defendant.
-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)



OZRO THADDEUS WELLS, being duly sworn, deposes and says:

I am an attorney at law duly admitted to practice in the State of New York and before the Supreme Court of the United States.

This affidavit is submitted in support of my application to substitute Lawrence Levine, Esq. as attorney for the above-named defendant in the matter now pending before this Court.

The case herein has been scheduled for trial for Friday, 18 January 1974. Unfortunately, this trial date conflicts with my current schedule, in that I am actually engaged in trial in the Supreme Court of the State of New York, County of New York, Part 45 in the matter of People v. Carlos Burgos.

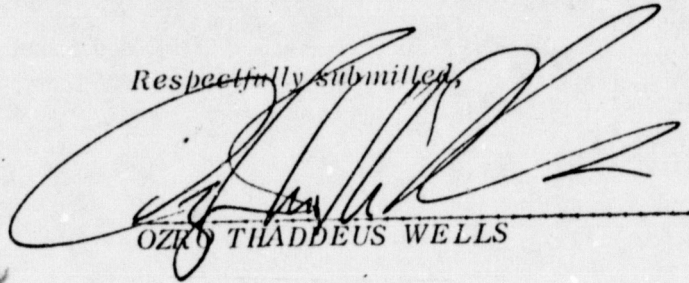
I am respectfully requesting that the case herein be rescheduled for 25 February 1974 which will give me sufficient time to arrange my trial schedule to be available to represent Mr. Martin, the defendant herein, on the requested adjourned date without conflicts or interruptions.

Mr. Martin, the defendant herein, has been personally consulted by a representative from my office and Mr. Martin consents to the substitution and joins in the request for the adjournment to 25 February 1974.

A-7

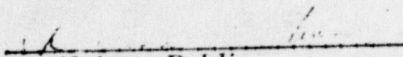
WHEREFORE, your deponent respectfully requests that this Court accept the substitution and adjourn the case to the date requested.

Respectfully submitted,



OZRO THADDEUS WELLS

Sworn to before me this
17th day of January, 1974


Notary Public

JOHN C. STEWART, Notary Public
New York No. 31,919,215
State of New York
Westchester County
Commission expires March 30, 1974

A - 8

United States of America

v.

AL MARTIN

No. 73 Cr 614 U.S.D.C. N.Y.

On this 28th day of March, 1974 came the attorney for the government and the defendant appeared in person and by O.T. Wells, Esq.

IT IS ADJUDGED that the defendant upon his plea of² not guilty and a verdict of guilty by a jury, has been convicted of the offense of by force and violence and intimidation, did take and attempt to take from the person of another money and property belonging to and in the care of the Chase Manhattan Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, U.S. Code, Sections 2113 (a) and 2)

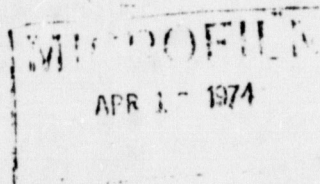
as charged³ and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴ FIFTEEN (15) YEARS,

Bail is Fixed at \$50,000.00 Pending Appeal.

~~IT IS ADJUDGED THAT~~



IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Marion Beech

United States District Judge.

~~The Court recommends commitment to~~

A - 9

Raymond K. Bingham

Clerk.

¹Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." ²Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. ³Insert "in count(s) number" if required. ⁴Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. ⁵Enter any order with respect to suspension and probation. ⁶For use of Court to recommend a particular institution.

REMO ENDOYSED

Cur 3/11/74 K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES OF AMERICA

-against-

AL MARTIN,

Defendant.
-----X

NOTICE OF MOTION FOR
JUDGMENT OF ACQUITTAL
NOTWITHSTANDING THE
VERDICT, OR IN THE
ALTERNATIVE, FOR A NEW
TRIAL

73 CR. 814

S I R S :

PLEASE TAKE NOTICE that upon the annexed duly sworn affidavit of OZRO THADDEUS WELLS, and upon all the proceedings had herein, that the undersigned will move this Court before the Honorable MILTON POLLACK at the United States Courthouse, located at Foley Square, Borough of Manhattan, City of New York, on the 15 day of *MARCH* 1974, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, to set aside the verdict of guilty returned against AL MARTIN, the defendant herein, on 1 March 1974, and that the Court order the entry of judgment of acquittal of any offense charged in the indictment against the defendant AL MARTIN in accordance with the motion and supplementary motion for judgment of acquittal made by the defendant AL MARTIN at the close of all the evidence.

In the alternative, the defendant will move that the Court set aside the verdict of guilty returned against him and grant him a new trial for the following reasons:

1. The verdict is contrary to the weight of the evidence.
2. The verdict is not supported by substantial evidence.
3. The Court erred in denying the defendant's motion for acquittal made at the conclusion of the evidence.

6

A-10

4. The Court erred in allowing the Assistant United States Attorney to introduce evidence of other crimes not included in the indictment since it was not related to or under the indictment at issue, and its introduction into evidence so tainted the proceedings as to permit the jury to draw unfair and prejudicial inferences.
5. As a matter of law there was reasonable doubt as to the defendant's guilt.
6. The Court erred in its charges to the jury that considerable time and money would be wasted if they did not reach a verdict and that the case would be retried after the jury had deliberated for a lengthy period of time but failed to reach a verdict.

Yours, etc.,

OZRO THADDEUS WELLS, ESQ.
C. VERNON MASON, of Counsel
Attorneys for Al Martin
377 Broadway - Suite 1107
New York, New York 10013
(212) CA 6-3000

TO: HONORABLE MILTON POLLACK
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States of
America
Attention: Michael B. Mukasey
Assistant U. S. Attorney
U. S. Attorney's Office
U. S. Courthouse
Foley Square
New York, New York 10007

A - 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES OF AMERICA

-against-

AL MARTIN,

Defendant.
-----X

AFFIDAVIT IN SUPPORT OF
MOTION FOR JUDGMENT OF
ACQUITTAL NOTWITHSTAND-
ING THE VERDICT, OR IN
THE ALTERNATIVE, FOR A
NEW TRIAL

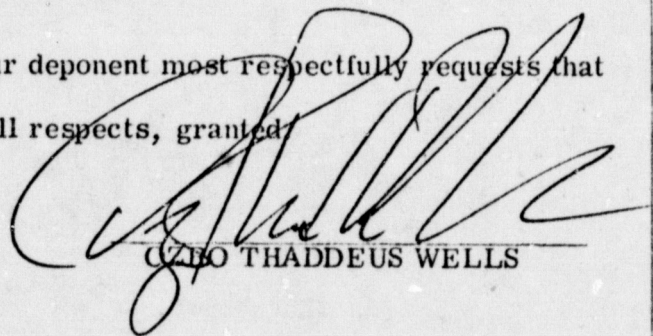
73 CR. 814

STATE OF NEW YORK)
 :SS.:
COUNTY OF NEW YORK)

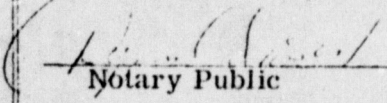
OZRO THADDEUS WELLS, being duly sworn, deposes and
says:

1. I am the attorney for the defendant AL MARTIN, and respectfully submit this affidavit in support of his motion for judgment of acquittal.
2. On 1 March 1974, the defendant AL MARTIN was convicted of bank robbery.
3. That this verdict was contrary to the weight of the evidence and was not supported by substantial evidence.
4. That the rulings of the Court some of which are enumerated in the Notice of Motion herein were in error and denied the defendant's right to a fair trial.

WHEREFORE, your deponent most respectfully requests that the relief sought herein be, in all respects, granted.


OZRO THADDEUS WELLS

Sworn to before me this
7th day of March, 1974


Notary Public

DIANA C. STEWART Notary Public
State of New York
County of New York
City of New York
Commission Expires 1974

A-12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES OF AMERICA

-against-

AL MARTIN,

Defendant.
-----X

NOTICE OF APPEAL

Indictment

73 CR. 814
Mp

NAME AND ADDRESS OF APPELLANT:

Albert Martin, presently confined at the Federal House of
Detention for Men, 427 West Street, New York City.

NAME AND ADDRESS OF APPELLANT'S ATTORNEY:

Ozro Thaddeus Wells, Esq., 377 Broadway, New York, N. Y. 10013

OFFENSE:

Violation of Title 18, United States Code, Sections 2113 (a) and 2.

Appellant appeals from the judgment of conviction rendered against
him on the 28th day of March, 1974, wherein he was sentenced to
imprisonment for a term of fifteen (15) years.

The above-named appellant hereby appeals to the United States
Court of Appeals for the Second Circuit and from each and every part and
the whole thereof does the appellant appeal.

Dated: New York, New York
April 4, 1974

Yours, etc.

Ozro Thaddeus Wells
OZRO THADDEUS WELLS
Attorney for Defendant-Appellant
377 Broadway - Suite 1107
New York, N. Y. 10013
(212) CA 6-3000

TO: Hon. Paul J. Curran
United States Attorney for the
Southern District of New York
U.S. Courthouse
Foley Square
New York, N. Y. 10007

A-13

4/4/74
ISSUED 20
PAY INSTRUCTIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

U. S. A.

- 0 -

AL MARTIN et al

CASE NO. 73 CR 814

JUDGE Pollock

CLERK'S CERTIFICATE.

I, RAYMOND F. BURCHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- B, and the original filed papers numbered 1 thru 9, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

1-22-74

B

BRIEF DESCRIPTION

FILED WRIT & HABEAS CORPUS

-PUS

74

IN TESTIMONY WHEREOF I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 9 day of April, in the year of our Lord, One thousand nine hundred and seventy four, and of the Independence of the United States the 198 year.

Raymond F. Burchardt
Clerk of the Court.

A-14



1
2 THE COURT: We'll stand in recess for five
3 minutes.

4 (Recess.)

5 *

6 *

7 *

8 (In open court, jury present.)

9 THE COURT: Ladies and gentlemen, I am going
10 to give you my instructions on the law. They should be
11 relatively brief, then the marshals will take you out to
12 lunch at the government's expense, and when you return,
13 you will begin your deliberations.

14 Members of the jury, it's the Court's
15 function to instruct you with respect to matters of law.
16 It's your duty as jurors to follow those instructions.
17 It's your exclusive function to determine the facts in
18 this case. You are the sole judges of the facts, not
19 counsel, not I.

20 In considering the testimony that you have
21 heard in this case, you may not draw any inferences from
22 an unanswered question nor consider testimony which has
23 been stricken from the record. The law requires that
24 your decision be made solely upon the competent evidence
25 before you, the evidence which the Court has allowed.

Furthermore, you must not infer from my
rulings or anything I have said during the trial that I

A-16

1
2 hold any views for or against any party.

3 The resolution of the facts of this case is
4 entirely your function.

5 Before the particular charge in this case is
6 discussed, there are some general principles you should
7 bear in mind. The defendant has pleaded not guilty. An
8 indictment is an accusation designed to bring an accused
9 to Court. It's not the function of a Grand Jury to
10 determine guilt or innocence. It passes only on probable
11 cause to believe that the defendant is implicated.

12 The trial jury, yourselves, alone, are to
13 decide whether the defendant is guilty or not guilty.
14 You are to give no weight to the fact of the indictment.

15 The defendant comes before you clothed by
16 the law with a presumption of innocence in his favor.
17 Coming here for trial, he is presumed to be innocent
18 and that presumption of innocence continues right through
19 the trial and exists now and accompanies you into the jury
20 room.

21 That presumption is always there, and the
22 only way it can be destroyed is, by all twelve of you
23 agreeing on the basis of evidence that the defendant's
24 guilt was established.

25 If the evidence which you accept and believe

A-11

1
2 convinces you beyond a reasonable doubt that the
3 presumption must be discarded and a verdict of guilty
4 returned, then the presumption is destroyed. The burden
5 of proving guilt beyond a reasonable doubt on every
6 essential element of the charges lies with the prosecution
7 and continues throughout the trial. No duty or burden
8 rests on the defendant to prove his innocence. Only if
9 this burden is fairly met by the prosecution can the
10 defendant be convicted.

11 If having heard all of the evidence and
12 applying to it the directions and rulings of law on
13 which I am instructing you you have a reasonable doubt
14 that this defendant is guilty of the offense with which
15 he stands charged, then you must acquit him.

16 This rule does not mean that the prosecution
17 must show that the defendant is guilty beyond all doubt,
18 nor to an absolute certainty. The rule does not mean
19 that you can rely on a doubt that is just capricious. Neither
20 does it mean a doubt formed of a reluctance of a juror
21 to perform an unpleasant duty, or arising out of sympathy
22 for a defendant, nor is such a doubt, a mere guess
23 or a surmise.

24 Speculative notions or possibilities resting
25 on mere conjecture not arising or deducible from the proof

A-18

1
2 should not be confounded with a reasonable doubt. A
3 doubt suggested by the ingenuity of counsel or by your
4 own ingenuity not legitimately warranted by the evidence
5 or want of it, or one born of a merciful inclination
6 to permit a defendant to escape the penalty of the law
7 or one prompted by sympathy for him or those connected
8 with him, is not what is meant by reasonable doubt.

9 If after you carefully consider the evidence
10 you have a settled belief or conviction in your minds
11 such as would induce a prudent person to act without
12 hesitation in a matter of importance to himself or herself,
13 then you may say you have been convinced beyond a reasonable
14 doubt.

15 If, however, your mind is wavering or uncertain
16 to the point that you have a doubt that would cause a
17 prudent person to hesitate in a matter of importance and
18 before acting, then you have not been convinced beyond a
19 reasonable doubt and you should acquit.

20 You have heard reference to stipulations that
21 were entered into by the attorneys for each side in this
22 matter. This means that both sides agree that you shall
23 accept the stipulated facts as undisputed.

24 In determining the facts, you are going to
25 have to rely upon your own common sense and general

A-19

1
2 experience in evaluating the evidence. It was a short
3 trial. I am not going to go into the detailed evidence
4 for you. You have heard what each of the lawyers contends
5 was shown by the evidence or the lack of evidence.

6 If you have any doubt about what was said from
7 the witness stand, you could send a note in through
8 Mrs. Patterson who will act as your foreman. She is the
9 lady who sits in seat number one. We'll try to find what
10 you want read to you, but remember, it takes a little
11 time to get it, so try to fix what you want, if you want
12 anything, with particularity and as precisely as possible.

13 I will use the phrase during the course of
14 this charge, willfully and knowingly, because the charge
15 against the defendant requires that this element be
16 present.

17 A person does not knowingly do an act if his
18 actions resulted from mistake or negligence or other
19 innocent reason. On the other hand, an act is willful
20 if the defendant acts voluntarily and intentionally and
21 with a specific intent to do something that the law
22 forbids. That is to say, with a bad purpose to either
23 disregard or disobey the law.

24 The law involved here is one that I will tell
25 you about in a moment.

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2 The state of mind of the defendant is going
3 to have to be inferred from the evidence as you heard it
4 from the witness stand, because you can't look into a
5 person's head, assuming there were these people in the bank
6 which is, of course, the crucial matter for you to determine.

7 The charge in the indictment which brought
8 the defendant to Court is as follows:

9 "On or about the 16th day of August, 1972, in
10 the Southern District of New York, Al Martin and John Doe,
11 the defendants, and others to the Grand Jury known and
12 unknown, by force and violence and by intimidation did take
13 and attempted to take from the person of another, money
14 and property in the amount of \$4,553.05, belonging to
15 and in the care, custody, control, management and possession
16 of the Chase Manhattan Bank, 2065 Second Avenue, New York,
17 New York, a bank, deposits of which were then insured by
18 the Federal Deposit Insurance Corporation."

19 If the charges in that indictment are true,
20 that would constitute a violation of the United States
21 Code, and that code reads as follows, and I am going to
22 quote the statute to you:

23 "Whoever by force and violence or by intimidation
24 attempts to take from the person or presence of another
25 any property or money or any other thing of value belonging

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2 to or in the care, custody, control, management or
3 possession of any bank, shall be guilty of a felony."

4 If you analyze that statute, you will see that
5 the government has to prove four elements with respect to
6 this charge. Each ^{has} to be proved beyond a reasonable
7 doubt.

8 First, that the defendant took money from
9 the bank.

10 You will recall the testimony of the tellers
11 and of the persons allegedly present in the bank reciting
12 their versions of the events on the day in question and
13 of the witness, Charles Johnson, who testified he was
14 with John Witherspoon and Al Martin on August 14th to
15 plan a robbery and participated with them in robbing this
16 bank on August 16th.

17 With regard to the \$4,553.05 mentioned in
18 the indictment, it's only necessary that the government
19 prove that more than one hundred dollars was stolen. They
20 need not prove the exact amount stated, but you recall that
21 the attorneys nonetheless stipulated to the larger amount,
22 stipulated that if a witness were called, he would testify
23 that that was the amount that the bank lost, or had missing.

24 The second thing that has to be shown, that
25 such money was taken from the person and presence of others

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2 when it was in the care, custody, control or possession
3 of the bank, and it has been stipulated that this was a
4 bank within the meaning of the statute, a bank whose
5 deposits are federally insured.

6 Third, that the money was taken by force
7 and violence and intimidation.

8 Force and violence means physical force unlaw-
9 fully exercised.

10 Intimidation means putting in fear, but
11 the fear must come from the conduct of the accused that is
12 objective and such as would cause a reasonable person to be
13 in fear of bodily harm rather than such fear as would be
14 generated from a mere tempermental nature.

15 Finally, and fourth, these acts have to be
16 done knowingly and willfully, and I have already
17 explained to you what those words mean.

18 The government also relies on the so-called
19 aiding and abetting statute, which is also included in
20 the charges in the indictment. That statute which is
21 known as Title 18 of the United States Code, Section 2,
22 reads as follows:

23 "Whoever commits an offense against the
24 United States, or aids, abets, counsels, commands, induces,
25 or procures its commission, is punishable as a principal.

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Whoever willfully causes an act to be done whether directly performed by him or another would be an offense against the United States, is punishable as a principal."

That is the statute. It's not necessary then for the government to show that the defendant personally committed the crime himself, rather, a person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself. Accordingly, you may find the defendant guilty of the offense charged if you find beyond a reasonable doubt that Charles Johnson or John Witherspoon committed the offense and that the defendant Al Martin aided and abetted him or either of them.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourself these questions:

Did he associate himself with the venture?

Did he participate in something he wished to bring about?

Did he seek by his actions to make it succeed? If he did, then he is an aider and abettor.

The law recognizes two types of evidence, direct and circumstantial, either of which may be

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2 sufficient to convict providing the jury is convinced
3 beyond a reasonable doubt.

4 Direct evidence, of course, is evidence from
5 a witness who was present at a conversation or the commission
6 of an act and testifies as to what he or she saw or heard
7 or discovered; what he or she knows of his own knowledge,
8 something which comes to him or her by virtue of his or
9 her senses.

10 In this case, the government has also offered
11 circumstantial evidence on the basis of which it asks that
12 you draw certain inferences. Circumstantial evidence is,
13 I believe as most of you know, evidence that tends to prove
14 a disputed fact by proof of other facts which have a
15 logical tendency to lead one's mind to conclude that
16 the fact in issue exists.

17 Let me give you an example which is commonly
18 used in cases.

19 Suppose when you came in this morning as you
20 left the outdoors, the sun was shining and bright and it
21 looked as if we were going to have a pleasant day and when
22 you arrived in this courtroom the blinds were drawn so you
23 couldn't look outdoors and as you were sitting here a
24 couple of hours later, in walked someone with a raincoat
25 that was dripping, and an umbrella that was wet and with

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2 rubbers and shaking off water from his hat. You haven't
3 seen any rain. You don't know what is happening outside,
4 but from the fact that a person came in with the raincoat,
5 the umbrella and the dripping water, from that fact, that
6 would be a circumstance from which you could infer the
7 further fact, that what you couldn't see outside
8 was that it was raining, and you would be entitled to
9 infer from that that it was raining.

10 Circumstantial evidence may be considered
11 by you and should not be given any less weight because
12 it is circumstantial rather than direct.

13 That type of evidence need not exclude
14 every possible innocent explanation and you are not
15 limited to drawing only those inferences from it that
16 are most favorable to a defendant.

17 In addition to the testimony you heard from
18 the witnesses, exhibits were introduced and they too
19 constitute evidence to be considered by you. It's for
20 you and for you alone to decide what these exhibits are
21 in fact and what they mean and what they say if anything,
22 and what their connection may be with the issues to be
23 decided.

24 In brief, the government contends that its
25 proof which includes the exhibits, shows beyond a reasonable

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2 doubt that the defendant was one of the men who allegedly
3 robbed the bank at about 9:00 in the morning on
4 August 16, 1972.

5 The defendant has denied complicity here.
6 He pleaded not guilty and his counsel relies on the
7 defendant's presumption of innocence and contends that
8 in all events, the government has not proved beyond a
9 reasonable doubt that he was one of the alleged robbers.

10 You must decide what the facts are and if the
11 defendant was connected with the robbery of the bank on
12 the basis of the direct and circumstantial evidence
13 before you.

14 You are privileged to request the exhibits
15 be sent in to you so you could inspect them at close
16 range if you want them, if you want to see them.
17 My reference to the exhibits and to any aspect of the
18 testimony are not to control your own determination and
19 view of the facts nor are you to be influenced in any
20 way by my description or the manner of it.

21 In short, it's your responsibility alone to
22 find the facts and no statement of mine or of counsel is
23 binding on you in resolving what the facts are.

24 Some additional rules of law for your guidance
25 are as follows:

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2 An accomplice is a person who voluntarily
3 participates in the commission or the planning of a crime.
4 Charles Johnson is a self-admitted alleged accomplice in
5 the alleged bank robbery. The government must frequently
6 use testimony of alleged participants to bring out the
7 alleged facts. An accomplice is one who unites with
8 another person in the commission of a crime voluntarily
9 and with common intent.

10 Testimony of an alleged accomplice should
11 be closely examined and weighed with great care. The
12 fact that a witness is an accomplice may be considered by
13 you as bearing upon his credibility. However, it does not
14 follow that because a person has acknowledged participation
15 in a crime charged against the defendant, the alleged
16 accomplice is not capable of giving a truthful version
17 of what occurred.

18 The law in the federal courts is that if the
19 jury believes the implicating testimony of an accomplice
20 to be true beyond a reasonable doubt, that testimony is
21 sufficient to convict the defendant even though it may not
22 be corroborated or supported by any other evidence.

23 The government contends that it has provided
24 ample corroboration and support for Johnson's testimony,
25 as well as independent evidence of Martin's

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2 presence in connection with the alleged crime in the
3 form of witnesses, exhibits and circumstances.

4 The defendant argues to the contrary. If
5 after a cautious and careful examination of the testimony
6 of an accomplice and his demeanor on the witness stand you
7 are satisfied beyond a reasonable doubt that he told the
8 truth as to the events and participants therein which
9 he described, there is no reason why you should not
10 accept it as credible and act upon it accordingly.

11 Evidence that any witness has been convicted
12 in the past of criminal conduct may be considered by you
13 in determining his credibility by which is meant, his
14 worthiness of belief.

15 A conviction does not make a person necessarily
16 unworthy of belief, but it will be one of the facts which
17 will help you decide whether to believe him and how far.

18 Such evidence is presented solely to aid you
19 in considering his believability. A prior conviction will
20 not decide this for you in and of itself.

21 It's your duty to determine the credibility
22 of the witnesses whom you have heard and weigh their
23 testimony. In weighing their testimony, you may consider
24 the witnesses' interest in the outcome of the case, if any,
25 their manner while testifying, their candor and intelligence

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2 as you have observed them, the extent to which they have
3 been corroborated or contradicted by other credible
4 evidence, inconsistencies within their own testimony
5 and whether they have changed their testimony. Not every
6 contradiction in testimony is necessarily intentionally
7 false testimony. However, if you believe that a witness
8 has willfully sworn falsely before you with respect to a
9 material element of the case, you are privileged to
10 disregard the whole or any part of his or her testimony.

11 You may accept what if anything you believe,
12 and disregard what you find to be false.

13 Your recollection of the evidence governs.

14 The defendant did not testify on his own
15 behalf and our law says a defendant may or may not
16 take the stand. The failure to testify cannot be considered
17 by you as evidence against him, or form a basis for any
18 presumption or inference unfavorable to him. A defendant
19 is not required to establish his innocence.

20 If you find beyond a reasonable doubt that
21 the defendant fled or concealed himself, or disguised his
22 appearance immediately after it was discovered that a
23 crime was committed in order to avoid subsequent identifi-
24 cation and apprehension by law enforcement officers who
25 might be seeking him in connection with his alleged conduct,

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2 such fact may be considered as evidence of guilty
3 consciousness pertaining to the charges against him
4 relevant only on the issue of knowledge and intent.

5 Whether or not evidence, if you find any, of
6 flight or change of appearances shows a consciousness of
7 guilt and the significance if any to be attached to such
8 circumstances, are matters for your determination.

9 The flight or change of appearance of a
10 defendant does not create a presumption of guilt, but is
11 merely a fact to be considered by you together with all
12 the other facts and circumstances in determining whether
13 the defendant is guilty or not guilty.

14 Members of the jury, under your oath as
15 jurors, you cannot allow consideration of the punishment
16 which might be inflicted upon a defendant if convicted to
17 influence your verdict in any way. That is not your
18 responsibility. The duty of imposing sentence rests
19 exclusively upon the Court. That is solely the Judge's
20 responsibility. Your function is to weigh the evidence
21 in the case and determine the facts upon the basis of the
22 evidence under the rules of law.

23 You are entitled to your opinions, but you
24 should exchange views with your fellow jurors and listen
25 carefully to each other. While you should not hesitate
or be embarrassed to change your opinion if you are convinced

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2 that another opinion is correct, your decision must be
3 your own. Your verdict to be accepted must be unanimous.

4 Ladies and gentlemen, use your common sense
5 in evaluating the evidence, the circumstances and the
6 probabilities. Do not allow yourselves to be swayed or
7 carried away or inflamed by appeals to passion, sympathy
8 or prejudice. Suspicion and conjecture should not be
9 substituted for proof. You must maintain a calm, clear
10 view of the case and not be sidetracked by anybody from
11 a fair, dispassionate consideration of the evidence in
12 arriving at your determining of the facts.

13 I have completed my instructions and I
14 will not take a moment to talk to the lawyers at the
15 side bar who may wish to call to my attention something
16 I may have overlooked, or as to which I may have misspoken.

17 (At the side bar.)

18 THE COURT: Are there any exceptions or
19 requests on the part of the government?

20 MR. MUKASEY: There was something I am not
21 certain of. I heard your Honor mention willfully and
22 knowingly but I am not sure I heard it defined.

23 THE COURT: Yes, I did define it.

24 MR. WELLS: I have no requests. Just, I
25 want to raise a question with the Court on two areas.

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2 Number one, circumstantial evidence. It's my recollection
3 that as far as the government's case and trying to
4 establish the robbery of the bank, that no circumstantial
5 evidence was presented and that the only circumstantial
6 evidence that can be inferred was the incident of the
7 25th of August on the Drive and the subsequent events and
8 it's my interpretation of that that an individual could
9 have been in the car and could have taken flight and still
10 not have been involved in the robbery of the 16th and I
11 believe it would be somewhat confusing if that they were
12 to consider that as a circumstantial evidence, that if
13 he were in effect in the car, that for them to impute that
14 he was also--as far as the incident of the 16th in the bank.

15 MR. MUKASEY: I simply wanted to point out
16 two things. First, there was circumstantial evidence
17 relating to what was shown and not shown in those
18 photographs.

19 Mr. Wells himself introduced an exhibit that
20 re-introduces the Pecorora credit card which mentions
21 in that paragraph three that he read that that credit
22 card was recovered from Ruby Lee and I did not mention
23 that in my summation but as far as I am concerned that is
24 back in the case and third is the element of flight, all
25 of which are circumstantial evidence.

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2 THE COURT: Suffice it to say for present
3 purposes, that since I have not delivered any charge
4 on the facts, I have merely given the jury understanding
5 of what the difference is between direct and circumstantial
6 evidence and it's for them to resolve the issues of
7 fact.

8 What is your other point?

9 MR. WELLS: Your Honor, in describing the
10 accomplice testimony made the statement, I believe, that--
11 I hope I am quoting the Court correctly, the Court
12 stated that the government on occasion must use accomplice
13 testimony in order to establish the fact which gives the
14 import that without the accomplice testimony, they would
15 not establish the fact.

16 THE COURT: The exact phraseology was, that
17 the government must frequently use testimony of
18 alleged participants to bring out the alleged facts, so
19 I didn't charge them as you indicated.

20 (In open court.)

21 THE COURT: There were no further matters
22 on which I am required to instruct you. In view of
23 the fact that the matter has reached its conclusion and
24 that we have a full complement of jurors available to
25 determine the case, it becomes my privilege and duty to

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